RACHAEL A. CABRAL-GUEVARA

STATE REPRESENTATIVE • 55TH ASSEMBLY DISTRICT

Testimony before the Assembly Committee on Health

Representative Rachael Cabral-Guevara

July 29th, 2021

Hello, Chairman Sanfelippo and members of the committee. Thank you for allowing me to testify on Assembly Bill 128, an important bill that will ensure patients' privacy is not violated without informed consent.

Historically, one practice of teaching medical students how to perform pelvic exams has been on unconscious, sedated patients undergoing gynecological medical procedures. This practice, however, for the sole educational benefit of a medical student, often failed to obtain the informed consent of the sedated patient.

This practice somehow is able to still be performed on a patient. The reasoning behind it is for educational purposes only, regardless of if the patient is aware it's even happening. This is a gross oversight that needs to be corrected in order to treat sedated patients with respect and within the code of ethics.

In recent years, people have been more vocal about defending their bodily integrity. This bill ensures that their voice is heard by giving the patient a clear, unveiled choice. It is not only a compassionate practice, it is a necessary one.

In addition, this bill is not the first of its kind. At least six other states have adopted this practice, and Wisconsin's two medical schools either already have this process in place or are setting the groundwork for it.

As a woman and healthcare provider myself, I was disgusted to learn that sedated patients can still have their bodily integrity violated with no informed consent. It is long past time we ended this outdated practice and at the very least inform patients of what is happening to their bodies while undergoing a medical procedure. At the end of the day, they are people, not lab experiments.

Thank you for your time. I am hopeful that this committee can support this bi-partisan piece of legislation.

P.O. Box 8952 • Madison, WI 53708-8952 • (608) 266-5719 • Toll Free: (888) 534-0055

Rep.Cabral-Guevara@legis.wi.gov

ANDRÉ JACQUE
STATE SENATOR • 1ST SENATE DISTRICT

Phone: (608) 266-3512
Fax: (608) 282-3541
Sen.Jacque@legis.wi.gov

State Capitol - P.O. Box 7882
Madison, WI 53707-7882

Testimony before the Assembly Committee on Health
Senator André Jacque
July 29, 2021

Chairman Sanfelippo and Committee Members,

Thank you for holding this hearing on Assembly Bill 128, the Patient Privacy Protection Act, strong bi-partisan legislation to ensure hospitals have a policy requiring written and verbal informed consent before a medical student may perform a pelvic exam on a patient who is under general anesthesia or otherwise unconscious.

Historically, one practice of teaching medical students how to perform pelvic exams has been on unconscious, sedated patients undergoing gynecological medical procedures. This practice, however, for the sole educational benefit of a medical student, often failed to obtain the specific, informed consent of the sedated patient.

Unfortunately and unbelievingly, this practice continues at some hospitals, as detailed in a 2018 article in *Bioethics,* numerous other articles, and anecdotal reports right here in Wisconsin. At certain hospitals, gynecological surgery patients under anesthesia continue to be used as practice tools for medical students, often without the patient's specific consent that they will be undergoing a pelvic exam by a medical student for solely educational purposes. A recent survey of 101 medical students from seven American medical schools found that 92% had performed a pelvic exam on anesthetized female patients, 61% of whom reported not having explicit consent from the patients. This is a violation of a patient's rights and trust between patient and doctor, and directly ignores a patient's right to bodily autonomy.

Informed verbal and written consent in these instances should be required. Like any medical procedure, there should be an explicit explanation of what will happen while the patient is under anesthesia, including the presence and practice of pelvic exams by medical students for solely educational purposes.

In recent years, many women have felt empowered for the first time to discuss experiences of sexual assault and harassment. The practice of trauma informed care has emerged as an essential treatment tool in clinical settings to address the experience of trauma patients. This bill helps ensure compassionate practice and that the experiences and voice of the patient is respected.

Wisconsin's two medical schools either have a policy or are in the process of adopting a policy to require specific written consent before a pelvic exam may be performed by a medical student. This bill makes certain that all hospitals training and teaching medical students also abide by obtaining specific patient consent in these instances.

ANDRÉ JACQUE
STATE SENATOR • 1ST SENATE DISTRICT

Phone: (608) 266-3512
Fax: (608) 282-3541
Sen.Jacque@legis.wi.gov

State Capitol - P.O. Box 7882
Madison, WI 53707-7882

Under the Patient Privacy Protection Act, hospitals must obtain a patient's written and verbal consent before allowing a medical student to perform a pelvic exam on a sedated patient. AB 128 closely tracks a proposed UW Hospital policy and aligns with the positions of the American Medical Association, which formally opposes "performing physical exams on patients under anesthesia or on unconscious patients that offer the patient no personal benefit and are performed solely for teaching purposes without prior informed consent to do so," and the Association of American Medical Colleges, which has denounced pelvic exams without specific consent as "unethical and unacceptable." AB 128 is supported by the Wisconsin Nurses Association and the Wisconsin Coalition Against Sexual Assault.

Wisconsin should join the growing list of more than a dozen states that already have legislation prohibiting this practice of teaching. Female patients deserve to have their bodily integrity respected when they are unconscious and vulnerable during a medical procedure.

Thank you for your consideration of Assembly Bill 128.

WISCONSIN COALITION AGAINST SEXUAL ASSAULT

Testimony

To:	Members of the Assembly Committee on Health
From:	Wisconsin Coalition Against Sexual Assault (WCASA)
Date:	July 29, 2021
Re:	Assembly Bill 128
Position:	Support

The Wisconsin Coalition Against Sexual Assault (WCASA) appreciates the opportunity to offer this written testimony for your consideration. WCASA is a is a hybrid organization: functioning both to support member Sexual Assault Service Providers (SASPs), while advancing the anti-sexual assault movement in the state and nationally.

WCASA thanks Committee Chair Sanfelippo for bringing this important piece of legislation forward for a hearing today. We also thank the leading sponsors of the bill, Representatives Cabral-Guevara and Bowen and Senators Jacque and Taylor for their leadership on this legislation in both houses.

A survey of 101 medical students from seven medical schools and found that 92% percent reported performing a pelvic exam on an unconscious patient[1]. 61% reported performing this procedure without explicit patient consent.[2] Furthermore, a survey conducted in 2005 at the University of Oklahoma found that a majority of medical students had performed pelvic exams to gynecologic surgery patients under anesthesia, and that in nearly 75% of these cases the women had not consented to the exam[3]. We support AB 128 as it requires hospitals to have and enforce a policy requiring written and verbal informed consent before a medical student, nursing student, or anyone providing nursing care may perform a pelvic examination upon a patient who is under general anesthesia or otherwise unconscious.

The emphasis on consent and body autonomy in this legislation are important as they are cornerstones of sexual violence prevention efforts. As a result, AB 128 not only reflects the values of the anti-sexual violence movement, but it is also extremely important for survivors seeking healthcare. A sexual violence survivor has already experienced a violation of their bodily autonomy. Performing a pelvic examination without their informed consent represents yet another violation – however this time it is when they are seeking critical healthcare services. By ensuring survivors' boundaries are respected during medical procedures, this bill prevents re-traumatization by ensuring no pelvic examination is performed without their written and verbal permission.

This legislation also reflects the values of patient-centered health care, which is defined as care that "is respectful of and responsive to individual patients' preferences, needs and values, and ensures the patients' values guide all clinical designs."[4] Given the invasive nature of a pelvic exam, it only makes sense that a patient's consent is obtained before a medical student performs such an exam upon a patient who is not able to provide informed consent. Patient-centered health care represents a cultural shift in our health care

[1] https://www.elle.com/life-love/a28125604/nonconsensual-pelvic-exams-teaching-hospitals/
[2] Ibid.
[3] https://www.ncbi.nlm.nih.gov/pubmed/16206868
[4] "What are Important for Patient Centered Care?" Journal of Caring Sciences. Published November 2013.

system, and this legislation honors that shift by focusing on the patient's preferences and shared decision making with their health care provider.

We thank you for your attention to this matter and for your continued efforts to improve health care responses for sexual assault survivors. If you have any questions, you can reach me at ianh@wcasa.org.

To: Members of the Assembly Committee on Health

From: American College of Obstetricians and Gynecologists – Wisconsin Section
Medical College of Wisconsin
University of Wisconsin School of Medicine and Public Health
Wisconsin Hospital Association

Date: July 29, 2021

RE: Wisconsin Hospital, Physician and Medical School Coalition's Position on Assembly Bill 128

Wisconsin's hospitals, medical school faculty and physicians all greatly value the physician-patient relationship and take their respective informed consent obligations very seriously. Physician faculty are trained to show medical students appropriate informed consent practices and provide students with clinical training opportunities that are relevant to the patient's condition. Further, through the existing informed consent process, a patient will have a choice to have student learners involved in their care. If the patient chooses not to involve students, that is the patient's choice and it is respected by their provider.

Any patient who believes that their wishes have not been respected by a provider practicing within a hospital should report a complaint to the Department of Health Services' Division of Quality Assurance (DQA) for review. DQA is the state's entity for regulating hospitals and DQA surveyors have authority to interview providers, hospital staff and even investigate a patient's medical record when a complaint has been filed. No other state official, including elected officials, are ever able to see a complete picture of the patient's care because of patient confidentiality laws.

In addition to DQA's regulatory enforcement authority over hospitals, physicians and other health care providers are regulated by their respective examining boards through the Department of Safety and Professional Services. Any complaints regarding unprofessional conduct by a health care provider should be submitted to DSPS.

This coalition remains concerned with this legislation, as drafted. We look forward to working with the author and committee members to ensure the bill is consistent with informed consent practices in Wisconsin and that the legislation does not cause unintended consequences for hospitals, care providers, health care student learners and patients.

Testimony in support of Assembly Bill 128
Sarah Wright
7.29.21

Chairman Sanfelippo and Members of the Health Committee:

My name is Sarah Wright, and I am proud to say that it is partly because of me that this bill exists and we are here today. I am here because my bodily autonomy was violated during surgery, and I am determined to prevent others from suffering as I have. I am thankful to my former Representative, Chris Taylor, for listening to me and taking action when I told her my story. She helped to craft the original version of the pelvic exam bill. I am grateful to Representative Janel Brandtjen and Senator Andre Jacque, who sat next to me as I testified for the first time in 2020 and struggled to get through my story, and to Rep. Rachael Cabral-Guevara for joining them to revive this bill. And I thank Rep. Sanfelippo and the members of the Committee on Health for hosting this hearing.

I will share words that may be uncomfortable to hear. They are uncomfortable for me to say, too, although I live with them every day. When I first testified in January 2020, I was afraid to disclose such intimate details of my life. What I realized as the bill died in March 2020 was that there is a bigger fear: that those in positions of power would not be listening. That my suffering, and the embarrassment of sharing it so publicly, would be for naught. So I ask you to bear with me, and to really hear what I have to say. I think there is a great opportunity for everyone here. When this bill becomes law, it will protect women throughout Wisconsin, and it will help me to heal. And let's face it: there is not a lot that all Wisconsinites agree about right now. So let's grab a victory where we can. Colby cheese, the Bucks, and respect for informed consent....let's make this the Wisconsin Trinity of 2021!

This testimony could be extremely short. It could go something like this:
People put their fingers in the vaginas of unconscious women without their knowledge or permission. This happens in hospital operating rooms. We do not know how often this happens. The consent forms that patients are required to sign are written to be intentionally vague and cover a broad range of procedures.

I predict that people hearing this would be thinking two things:
1. If that truly does happen, that is reprehensible and should be stopped immediately. It only takes common sense and basic human decency to understand that penetrating the vagina of an unconscious woman without her consent is wrong.
2. This sounds so outrageous that this can't *really* happen, right? And you might need to hear more evidence. And that is why we are here, except that I wish we could just stop at point #1.

When I was here in 2020 to testify, I felt a need to summarize all the research and previous efforts to stop this practice, as though my testimony might be the only one. Today, I prefer to spend the rest of my time giving you a more personal perspective on the importance of this bill. I will also offer counterarguments to what you will hear from opponents of this bill. But I urge

you to read the testimony submitted by the legal scholar, Robin Fretwell Wilson, who has worked on this issue for decades; bioethicist, Dr. Phoebe Friesen, who has extensively documented the occurrence of educational pelvic exams without clear consent; and Dr. Ari Silver-Isenstadt, who took a leave from medical school to study bioethics after refusing to conduct pelvic exams on anesthetized women. Dr. Silver-Isenstadt is a huge inspiration. I repeat: he actually left medical school rather than be coerced into learning how to perform a pelvic exam without clear consent. This was a lonely and courageous position, and shows that this is an issue that affects and must be solved by both men and women.

In late 2018, I was preparing myself to undergo surgery to remove a potentially cancerous ovary. It was stressful, to say the least, to face the possibility of a serious illness while attending to my everyday life as a teacher and a mom. But what made the situation even worse was that I had had a traumatic experience with a similar surgery in 2009.

Certainly, it is hard to prove definitively what happened to me; after all, I was unconscious! But I entered that operating room as a healthy woman whose medical history included nothing more exciting than a wisdom tooth removal. When I emerged, I was nauseous for days, had trouble urinating, and was covered with purple bruises along my left torso from my ribcage to my hips. The worst of the injuries also took the longest to heal: an extreme sensitivity of the vulva, the tissue surrounding the entrance to the vagina. I was dumbfounded. The surgeon had accessed my ovaries through incisions in my abdomen. No one had given me any indication prior to the surgery that my vagina would be involved in any way. What on earth had happened to me when I was on that operating table?

My post-op appointment yielded no answers; the surgeon seemed to take it as a personal affront that I had a difficult recovery in any way. I obtained my medical records, but the sparse, 2-page document didn't provide any useful information either. They simply stated, "the vagina was prepped properly." Nothing in the pink pamphlet I was given about pelvic surgery stated anything about the vagina at all. Reading WebMD and MayoClinic.org did not specify anything either. The only way I had any idea what may have happened to me to result in the vulvar pain was that I am lucky to have a close relative who has worked in operating rooms for decades at multiple hospitals, often assisting during pelvic surgeries. She told me that an instrument called a uterine manipulator, which penetrates the vagina, is commonly used in order to position the uterus and hold it in place during surgery. She inferred that this device may have caused my vulvar pain, since it remains in place throughout surgery, although I most likely was subjected to pelvic exams for educational purposes as well.

By the way... Someday, I would love to see the expectations for informed consent apply to uterine manipulators and to pelvic exams performed by all practitioners. But it is especially urgent that we require explicit written consent for pelvic exams done by medical students for two reasons: 1) the exam done by a medical student is of no benefit to the patient at all, so failing to inform her of it is an especially egregious violation; in essence, she is being used as a test subject. 2) I have spoken with physicians young and old who agree that having consistent expectations for informed consent will protect not only patients, but also medical students who

feel uncomfortable doing pelvic exams without clear consent. In any case, this bill would raise awareness so that more patients will at least have a better idea what questions to ask.

When I needed surgery again in 2018, I was determined to be fully informed. Surely, I thought, things have changed since 2009. I approached hospital and medical school officials to inquire about their policies regarding informed consent for pelvic exams under anesthesia, as well as uterine manipulators. I even drew up my own "informed consent contract" that I intended to share with my surgeon, and sent it to hospital officials with the suggestion that something like it could it be used for all pelvic surgeries. That afternoon, I had a voicemail from the Patient Relations office asking me to call about my document.

At least I had drawn enough attention to get a call from the *head* of Patient Relations! In the course of our conversation, that Patient Relations head made many of the same arguments that are laid out in the joint statement from the medical lobbyists that was submitted against the bill in 2020 (although the lobbyists were notably absent from the hearing). She told me that if having the opportunity to withhold consent for an educational pelvic exam was "a dealbreaker," I should have my surgery at a private, all-female clinic (as if only women are capable of performing surgeries ethically). Here are arguments she and the lobbyists made against strengthening informed consent, and my counterarguments:

1. ***Not everyone wants to know what exactly will happen to them when they undergo a procedure.***
To this I say, it is the responsibility of the medical system to ensure that complete information is provided to all patients. Then, it is the choice of the patient what to do with that information. But attempting to hide behind the supposed squeamishness of some fraction of hypothetical patients is a poor excuse for failing to obtain fully informed consent. Moreover, as I said to the PR person, we are not talking about someone's cornea or hand or liver; we are talking about sexual organs. Touching them without first informing the patient is an especially heinous violation. When I pressed her, "can you imagine anyone NOT wanting to know that their vagina is going to be penetrated?", she conceded, "well, as a woman, I would want to know."

(By the way, this is not simply a "woman's issue." The same problem applies to rectal exams performed on unconscious patients undergoing colonoscopies, for example, as reflected in medical schools' updated policies on sensitive exams.)

2. ***We cannot possibly have a separate informed consent document for every procedure***. The consent form I was required to sign simply states that (and I quote): "medical student(s) or other assistant(s) present during my procedure will be able to, while under the supervision of my primary physician(s)/surgeon(s), perform and assist with important parts of the procedure(s)." (unquote) As written, it is the prerogative of the individual surgeon whether to inform patients about which "important parts of the procedure" may be performed by students. Adding a line to such forms to require explicit, specific written consent for educational pelvic exams may seem like a small matter. But to fail to do so leaves open the

possibility that women's bodies could be violated like I was. And as Dr. Silver-Isenstadt points out, it is NOT difficult or time-consuming to obtain true consent, if one really values it.

3. ***If a patient feels that their rights were violated or their informed consent was not obtained, they have recourse through the Department of Justice.***
First of all, patients are often unaware that this option exists. I did not learn of it until years after my surgery, when it was far too late for me to submit a complaint. Furthermore, in the aftermath of a traumatic incident, it is understandable for someone to simply want to try to forget about it and move on, or feel too emotionally fragile to pursue a complaint. The way that I was treated by the surgeon who failed me, who was only defensive and dismissive, definitely discouraged me from pursuing any recourse.

4. ***It is not the place of the legislative system to interfere in the patient-provider relationship.***
First of all, it IS the place of the legislative system to intervene when private or public entities fail to do their job, or cause harm to others. Ideally, hospitals would successfully regulate themselves. But this is not the case. Frankly, we may not be here if the officials I contacted had treated me as a patient in need of care, rather than an enemy to be avoided and discredited. If they had answered my questions about their informed consent policies, if they had conducted an investigation of my surgery like they promised, if they had truly listened to me and given an answer other than "have your surgery somewhere else," I would not have felt the need to approach my legislator in the first place. The medical school I contacted only updated their sensitive exams policy after Chris Taylor applied pressure on them to do so.

I can only speak to my own experience in having two surgeries, but in both instances, I was simply assigned the first available surgeon at a clinic covered by my insurance. It's not as if there was some personal connection from which to build a foundation of trust. All I had to go on was the general assumption that someone working in medicine is motivated to help others. Beyond that, currently, the burden of information-seeking is placed too heavily on the patient. A first-time patient does not know enough to even understand what questions to ask. It is mainly because I had learned the hard way what to expect that I knew what to ask of my second surgeon. It would have been so simple for the surgeon in 2009 to just tell me that he needed to perform a pelvic exam, as well as his resident, and ask if it was okay for trainees to do so as well in order to learn proper technique. I likely would have said yes—after all, I am a teacher! But having been deceived and ill-informed has left me guarded and less likely to offer my consent in the future.

There are questions that haunt me. Who were the doctors-to-be who put their hands inside my unconscious body? Did they realize that no one had explicitly asked for my permission, that I had no idea any pelvic exam would occur? Did they think they had the right to use my body as a test subject, simply because I was there? Or did they believe the surgeon had informed me, and later realized with shame what had really happened? Did they even know my name? I will never know theirs. I do not even know who to ask to get these answers. I have spent years trying to reconcile myself with the knowledge that I never will get answers.

I know I will never receive anything close to an apology, and I am learning to be okay with that. What is NOT okay, and what keeps me fighting, is that what happened to me can still happen to other women. I will live with what happened to me for the rest of my life. It has changed me. I underwent physical therapy to address the tangible pain of that traumatic surgery. But my body was violated, and my sense of safety punctured in that operating room on August 31, 2009. So my body has forced me to pay attention. In situations that chip away at my sense of control, my body tingles with panic. Getting my teeth cleaned triggers unwarranted alarm. Unexpected touch makes me jump. I have exited crowded buses to escape the jostle of fellow passengers, my heart pounding and my vision blurring. I have delayed medical screenings and treatments because of the anxiety they induce. For me, the damage is done. But this should not keep happening to others. You have the power to ensure that it does not.

I hope I have convinced you that the need for this legislation is clear. We must all treat informed consent as if it is of the utmost importance, because it is. I am grateful to the bipartisan coalition of legislators from throughout Wisconsin who have signed on. You help to restore my faith that most of us want to do what's right. Please do not leave women's consent up to chance. I urge you to support scheduling a vote on this important bill, and to vote YES on Assembly Bill 128.

References

Friesen, P (2018). Educational pelvic exams on anesthetized women: Why consent matters. *Bioethics* 32 (5), 298-307.

Ubel, PA, C Jepson & A Silver-Isenstadt (2003). Don't ask, don't tell: a change in medical student attitudes after obstetrics/gynecology clerkships toward seeking consent for pelvic examinations on an anesthetized patient. *American Journal of Obstetrics & Gynecology* 188(2): 575-9.

Wisconsin Alliance for Women's Health
www.supportwomenshealth.org

TO: Assembly Committee on Health
FROM: Katrina Morrison, Health Equity Director, Wisconsin Alliance for Women's Health
RE: Testimony in Support of AB 128
DATE: July 29, 2021

Dear Chairman Sanfileppo and Members of the Health Committee:

Thank you for the opportunity to provide testimony in support of Assembly Bill 128. My name is Katrina Morrison, and I am here on behalf of the Wisconsin Alliance for Women's Health. Our vision is that every Wisconsin woman -- at every age and every stage of life -- is able to reach her optimal health, safety, and economic security. In the spirit of our vision, we support legislation that will positively impact women's health and well-being in Wisconsin.

It seems obvious that if a woman is under anesthesia in a hospital, she should not have to worry about having a pelvic exam performed on her by a student learner without her explicit consent. However, the unsettling reality is that cases of unconsented pelvic exams continue to surface. Across the nation, this unethical practice has already been condemned by the American College of Obstetricians and Gynecologists, the American Medical Association, the Association of American Medical College, legal scholars, and ethicists, and banned in seventeen states and counting.

While we appreciate that some hospitals in Wisconsin have strengthened their internal policies, patient consent forms and procedures, without statewide legislation there is no guarantee that a patient seeking care at any hospital in the state couldn't potentially undergo an unnecessary invasive, intimate exam without explicit consent. No matter where you seek care in Wisconsin, we believe all patients should never undergo a pelvic or rectal exam without explicit and informed consent.

Under AB 128, all Wisconsin hospitals require written and verbal informed consent prior to performing a pelvic exam on a patient prior to surgery. While existing consent procedures from some Wisconsin hospitals request permission for a student learner to be involved in the patient's care, it does not specify that a pelvic exam may be performed. In addition, if a patient wishes to report a non-consensual intimate exam, the structure of the current reporting system is complex and difficult to navigate, and in certain cases may lead to further traumatization.

At the national level, ACOG's Committee on Ethics published an Opinion addressing this very issue. The Opinion states, "Pelvic examinations on an anesthetized woman that offer her no personal benefit and are performed solely for teaching purposes should be performed only with her specific informed consent obtained before her surgery." This clarifies that the physician-patient relationship is underpinned by the ethical responsibility to prioritize patient welfare; and when teaching experiences are placed above patient care and patient bodily autonomy, the physician-patient relationship loses its integrity.

For the past 17 years, our organization has relied on the expertise and experiences of medical professionals, especially those on the front lines of women's healthcare, and we have the utmost respect for their dedication and work. The development of the next generation of healthcare professionals is an imperative we all share. This legislation aims to strike that balance between medical education and patient bodily autonomy.

P.O. Box 1726, Madison, WI 53701-1726 608-251-0139 toll free: 866-399-9294 fax: 608-256-3004 info@wiawh.org

Wisconsin Alliance for Women's Health
www.supportwomenshealth.org

AB 128 ends the unethical practice of performing pelvic exams on women under anesthesia without their explicit consent. It brings Wisconsin in line with the evidence-based practice and trauma-informed approach of receiving a patient's explicit consent before intimate and invasive exams. It protects survivors of sexual assault from enduring further violation of their bodies unnecessarily. It reinforces clinicians' ethical responsibilities by ensuring shared decision-making between patients and providers. And it honors patient preferences by safeguarding bodily autonomy. AB 128 is a critical intervention that showcases our elected leaders' commitment to the health and safety of all Wisconsin women.

As you consider this pressing legislation, we encourage you to expand the bill to include all intimate invasive exams, including rectal. While non-consensual pelvic exams have captured the attention of many, all non-consensual invasive and intimate procedures are equally as disturbing and should be prohibited.

Thank you, State Representative Cabral-Guevara and Senator Jacque, for your important leadership on this issue. We ask that this Committee support this bipartisan effort and move AB 128 forward to ensure Wisconsin's consent requirements are crystal clear.

Testimony Contact:
Katrina Morrison | Health Equity Director
Wisconsin Alliance for Women's Health
Katrina.Morrison@wiawh.org
(608) 344-2701

Assembly Committee on Health
Public Comment for AB128
July 29, 2021

Hello, my name is Denise Brusveen. I live near Poynette. I am thankful to the authors for re-introducing this bill this session, and I would also like to thank the rest of the legislators who have signed on as co-authors and co-sponsors. For those who still have not, I implore you to do so.

It is shameful that this bill even needed to be written in order for women and girls to maintain basic bodily autonomy. If this was happening outside of a hospital, it would be called rape, plain and simple. But somehow, being in a hospital setting and involving people with initials after their names allows them to exert an unequal power dynamic and do what they wish to unsuspecting women and even girls.

When I first learned that this was even a possibility that could happen to me or my daughters, I was sick to my stomach thinking about being violated in this way. According to the CDC, 1 in 5 women has been the victim of rape or attempted rape, and I'm sadly one of them. This makes it extremely hard to trust others, especially when being put in a vulnerable position. I cannot think of anything more vulnerable than being unconscious and unable to advocate for myself. But we are supposed to be able to trust that medical professionals will be just that – professional.

Unfortunately my experience as a birth doula for 10 years proved otherwise. From the 70 births I have attended, I could share with you countless stories of women receiving vaginal exams that they did not consent to and were not given the opportunity to decline. In multiple cases, women asked that the exam be stopped, and they were told 'no' and that it would only be a little longer. In some cases, these women were screaming at the top of their lungs and trying to physically move their laboring bodies away from the person doing the exam. But it didn't matter to these doctors and nurses. And this was for women who were awake and having unmedicated births. What about those who do not even get forewarning let alone the ability to say 'stop' at any time because they are sedated?

Additionally, I have had many clients who only wanted female doctors present due to past sexual trauma. If they go to the hospital for a procedure entirely unrelated to their pelvis, they may have no reason to state that they feel uncomfortable with male doctors or nurses. Then what happens if they are practiced on by one or more male doctors or nurses? Can you imagine the new trauma and distrust created by that? Imagine BEING one of the male doctors or nurses who violated a woman in that way and later learning that you caused that trauma for her. Or what about the male OR female students being told that they must perform the pelvic exams in order to complete their program even if it goes against their conscience?

There is nothing that can justify using women's bodies for practice and learning without so much as notifying them ahead of time let alone asking for consent. I have had a couple nurse friends that have told me that they are very professional while they do these exams. I don't really care how professional they think they are being. Rapists justify that it's ok to rape women too. It doesn't make it right.

I do not disagree that medical and nursing students need to gain experience with real people. But why not ask for permission? Why not leave it up to each individual woman as to whether or not she wants a pelvic exam by one or more individuals when it offers her no personal benefit? Yes, it may take more time to get enough women to say 'yes', but at the end of the day, I would hope that doctors and nurses could go home with a clean conscience then, knowing that they did not violate any women in order to gain their needed experience. They can know that they did not cause additional trauma to an unsuspecting woman.

We are at a time now more than ever that we need to BUILD trust in the medical system, which is why it is so sad that any hospital or medical organization would be opposed to this bill. It is deplorable that the American College of Obstetricians and Gynecologists – WI Chapter, Medical College of Wisconsin, Wisconsin Hospital Association, and the Wisconsin Medical Society all registered against this bill during the 2019-2020 session. So far, three of these organizations have registered as "undisclosed" on this current bill.

Why they are not registering in favor is beyond me. People who have nothing to hide, hide nothing. What IS their motive behind being deceptive and secretive about this practice? Even the American College of Obstetricians and Gynecologists, which the WI chapter falls under, stated in 2011 in a Committee on Ethics document, which was reaffirmed in 2020 that,

> "Pelvic examinations on an anesthetized woman that offer her no personal benefit and are performed solely for teaching purposes should be performed only with her specific informed consent obtained before her surgery."

The committee opinion goes on to state,

> "Some procedures, such as pelvic examinations under anesthesia, require specific consent 6. In women undergoing surgery, the administration of anesthesia results in increased relaxation of the pelvic muscles, which may be beneficial in some educational contexts. However, if any pelvic examination planned for an anesthetized woman offers her no personal benefit and is performed solely for teaching purposes, it should be performed only with her specific informed consent, obtained before her surgery 7 8. When patients are not making decisions for themselves, as may be the case with minors or those with brain injury or intellectual disability, consent for these pelvic examinations under anesthesia must be obtained from the patient's surrogate decision maker (eg, a parent, spouse, designated health care proxy, or guardian); however, when possible and clinically appropriate, the health care provider should also obtain the assent of the patient herself for such examinations."

It makes me want to vomit to think of one of my daughters being put under general anesthesia for a surgery or procedure potentially entirely unrelated to their reproductive health only to have doctors or nurses decide that their body is going to be a teaching tool at their disposal for the day. This is not ok. There ARE alternatives.

The authors of this committee opinion go on to state that,

> "Alternatives to teaching pelvic examinations exist that do not raise the challenges of securing informed consent. Today, many medical schools employ surrogates for patients to teach learners

how to perform pelvic examinations. These surrogates are variously referred to as gynecology teaching associates, professional patients, patient surrogates, standardized patients, or patient simulators."

So I do not want to hear that unconscious, unsuspecting women are the only way for doctors and nurses to gain experience. ACOG lists out that there ARE other options. And if our Wisconsin hospitals still insist that anesthetized patients are their best option, then they need to obtain consent. Plain and simple.

I urge you to pass this bill. Thank you.

Reference: ACOG Professional Responsibilities in Obstetric-Gynecologic Medical Education and Training. Committee on Ethics Opinion. Number 500. August 2011. https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2011/08/professional-responsibilities-in-obstetric-gynecologic-medical-education-and-training?utm_source=redirect&utm_medium=web&utm_campaign=otn

Assembly Bill 128
Public Hearing July 29, 2021

Sharon Hale testifying in favor of AB 128

Thank you for showing an interest in protecting vulnerable patients from egregious violations of their personal boundaries in a healthcare setting by considering and sponsoring AB 128.

I have been a healthcare provider since 1984. I practice as a licensed clinical social worker with licensure in WI and IL. I understand from my training, research, and from what my patients report from their experiences with healthcare that how our bodies are cared for by healthcare providers is integral to not only our physical health but also to our emotional, spiritual and relational health. This bill addresses a vital issue of respect for the boundaries, privacy, dignity, autonomy and trust of women seeking medical care.

One of my areas of specialty is the treatment of trauma. Over the years, I have treated many women who have been traumatized by experiences of violations of their personal boundaries, either by sexual assault and abuse, sex trafficking or sexual misconduct by healthcare professionals. The consequences of the trauma are often profound and long lasting, requiring arduous healing work.

It is a given that as healthcare professionals we are always in a more powerful position than our patients who are vulnerable and put their trust in us to care for them. That trust is a sacred trust. Healthcare organizations and professionals are ethically bound not to betray that trust by not violating the patient's boundaries and taking advantage of the patient's vulnerability. It is important that healthcare professionals and healthcare organizations have clear policies to ensure that the personal boundaries, dignity, autonomy and trust of the patient are not violated. The guardrails of fully informed verbal and **written** consent are essential to protecting the well- being of patients.

When a woman seeks medical care for an issue involving the pelvic area and her reproductive organs, she typically experiences being very vulnerable. She, therefore, needs to be able to trust that she will be treated respectfully.

Respectful treatment involves being fully informed about procedures, with credible and understandable reasons given for the procedures, as well as the opportunity for the patient to either give verbal and **written** consent or withhold verbal and written consent without any coercion by the provider or fear of retribution or withholding of medical care.

Procedures like doing a pelvic exam while the patient is unconscious or the taking of photographs of the genitalia while the patient is draped for a pelvic exam and unable to see what the provider is doing are invasive. If they are done without the patient being fully informed and given the opportunity to give verbal and **written** consent, the patient will experience the procedure as a serious violation of her personal boundaries. The patient is then left feeling shocked, shamed and powerless to object when she becomes conscious of the violation.

Many patients, because of experiencing shock, shame and being powerless, will not report the violation. But if the patient tries to report, her report is often met with discounting and an attempt to change the patient's reality. Coverups by the provider and discrediting of a patient's report further compound the trauma the patient experiences.

For women who have a history of sexual trauma—which is true of a significant percentage of women seeking medical care—the experience of having their boundaries violated in a medical setting by providers in whom they have put their trust is likely to undo much of the work of healing from former trauma. The consequences can be devastating, long term and interfere with the patient getting necessary medical care in the future.

This trauma and damage to the well-being of patients can be prevented by the guardrail proposed in AB 128. Thank you for your work on behalf of the welfare of vulnerable patients in medical settings.

Sharon Hale MA MSSW
ACSW CIRT LCSW
Lic WI & IL